

Message Text

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TO AMEMBASSY MANILA

INFO AMEMBASSY BANGKOK

CONFIDENTIAL STATE 091108

E. O.11652: XGDS(3) DECLAS DEC. 31, 1985

TAGS: EGEN, RP

SUBJ: LAUREL- LANGLEY: FOLLOW- ON NEGOTIATIONS

REFS: A. MANILA 12432(72)

B. STATE 193105 (72)

C. STATE 191592 (72)

D. MANILA 44

E. MANILA 4914

1. OUR BASIC INTERESTS, OBJECTIVES, AND POLICY IN THE PHILIPPINES REQUIRE THAT, WITHIN THE FRAMEWORK OF OUR GLOBAL TRADE AND PAYMENTS POLICIES, OUR LEGISLATIVE AUTHORITY, AND OUR NEED FOR FAIR TREATMENT OF U. S. PRIVATE INVESTORS, WE BE AS FORTHCOMING AS POSSIBLE IN
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RESPONDING TO PHILIPPINE FOREIGN TRADE NEEDS. WE THUS SHOULD BE BETTER ABLE TO BALANCE OUT THE POTENTIAL CONFLICT BETWEEN (A) THESE ECONOMIC INTERESTS, AND (B) OUR HIGHLY IMPORTANT NEED FOR CONTINUED EFFECTIVE MILI-

TARY BASE ACCESS AND (C) THE DESIRABILITY OF WORKING WITH THE MARCOS ADMINISTRATION TO IMPROVE THE PROSPECTS FOR LONG- TERM STABILITY IN THE PHILIPPINES. IN PARTICULAR, THIS APPROACH SHOULD REDUCE THE MARCOS ADMINISTRATION'S TEMPTATION TO APPLY PRESSURE TO OUR BASE ACCESS IN ORDER TO SECURE WHAT IT MAY REGARD AS THE PHILIPPINES' MINIMUM NEEDS IN ITS BILATERAL TRADE WITH THE U. S.

2. BASIC U. S. TRADE AND INVESTMENT POLICY TOWARD THE PHILIPPINES.

A. THE EXTENT TO WHICH WE CAN BE FORTHCOMING ON TRADE AND INVESTMENT IS CONSTRAINED BY:

-- OUR INABILITY TO CONTINUE, BEYOND THE EXPIRATION OF THE LAUREL- LANGLEY AGREEMENT IN 1974, OUR BILATERAL TARIFF PREFERENCES OR SPECIAL DUTY- FREE QUOTA ARRANGEMENTS, SINCE THIS WOULD BE CONTRARY TO BASIC U. S. GLOBAL TRADE POLICY, WOULD PREJUDICE OUR EFFORTS (WHICH APPEAR TO BE SUCCEEDING IN SOME INSTANCES) TO OBTAIN THE ELIMINATION OF DISCRIMINATORY TRADE PREFERENCES OF OTHERS THAT ARE DAMAGING TO OUR TRADE, AND WOULD EXCEED THE ADMINISTRATION'S PRESENT AND REQUESTED NEGOTIATING AUTHORITY.

-- OUR LACK OF STATUTORY AUTHORITY TO NEGOTIATE AN EXTENSION OF THE PHILIPPINE SUGAR QUOTA BEYOND THE EXPIRATION OF THE SUGAR ACT IN 1974.

-- OUR NEED TO AVOID, PARTICULARLY AS A DANGEROUS PRECEDENT, THE CONCLUSION OF AN FCN OR AER TYPE TREATY THAT FAILS TO ACCORD NATIONAL TREATMENT FOR U. S. PRIVATE INVESTORS IN A SIGNIFICANT WAY.

B. THUS, WE ARE CONCERNED BY THE IMPLICATIONS OF VIRATA'S APPROACH LAST DECEMBER (REF D) THAT THE GOP HAS NOT DROPPED FROM ITS NEGOTIATING POSITION ON AN FCN OR AER TYPE TREATY THE IDEA OF AN EXTENSION OF THE SUGAR QUOTA AND SPECIAL DUTY- FREE QUOTAS AND

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BILATERAL TARIFF PREFERENCES (AS WELL AS OTHER TARIFF QUESTIONS OUTSIDE OF THE GATT CONTEXT), AND IN ADDITION MAY NOT BE PREPARED TO CONSIDER SERIOUSLY THE ISSUE OF NATIONAL TREATMENT FOR ESTABLISHED FOREIGN INVESTMENT. SINCE COMMENCING NEGOTIATIONS ON THE BASIS OF SUCH GOP EXPECTATIONS WOULD MAKE THEIR SUCCESSFUL CONCLUSION UNLIKELY, WE BELIEVE WE MUST FIRST CLARIFY THE GOP POSITION ON THESE ESSENTIAL POINTS.

3. WITHIN THE FRAMEWORK OF THESE CONSTRAINTS, WE WANT TO BE AS FORTHCOMING AS WE ARE ABLE. MORE SPECIFICALLY,

A. ON THE SUGAR QUOTA, THE ADMINISTRATION IS PREPARED TO ASK CONGRESS FOR GENEROUS TREATMENT FOR THE PHILIPPINES

WHEN THE QUESTION OF AN EXTENSION OF OR FOLLOW- ON TO THE PRESENT SUGAR ACT COMES UP. THE GOP SHOULD DERIVE CONSIDERABLE ASSURANCE FROM THE FACT THAT THE PHILIPPINES ALREADY ENJOYS A QUOTA AND ENTITLEMENT FAR ABOVE THE LAUREL- LANGLEY AGREEMENT LEVEL, AND GENERALLY AT A MINIMUM OF - IF NOT EVEN ABOVE - WHAT THE PHILIPPINES

HAS FOUND IT POSSIBLE TO SUPPLY.

B. ON TRADE ACCESS TO THE U. S. MARKET. WHILE OUR ROOM FOR MANEUVER IS EXTREMELY LIMITED WE WILL TAKE PHILIPPINE INTERESTS SERIOUSLY INTO ACCOUNT IN ANY COMING GATT ROUND, SHOULD THE GOP DESIRE TO PARTICIPATE. WE ARE SYMPATHETIC TO PHILIPPINE TRADE CONCERNS, AND WE ARE PREPARED, ON AN MFN BASIS, TO BE AS FORTHCOMING AS POSSIBLE AS REGARDS PHILIPPINE INTERESTS, (SUBJECT TO WELL KNOWN U. S. TRADE CONCERNS, E. G. COCONUT OIL, TEXTILES, ETC.) ESPECIALLY IN THE CONTEXT OF ANY FURTHER GATT ROUND OF TALKS. WE MIGHT UNDERTAKE PRIOR CONSULTATION WITH THE PHILIPPINES TO SEEK WAYS TO COOPERATE DURING THE GATT ROUND. WE ALSO ANTICIPATE THAT GSP IMPLEMENTATION WILL HELP PHILIPPINE EXPORTS TO THE U. S.

C. ON U. S. INVESTMENT NEEDS IN THE PHILIPPINES:
THE SUBSTANCE OF U. S. INVESTMENT REQUIREMENTS.
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WHILE WE WOULD SEEK NATIONAL TREATMENT IN A BROAD AND MEANINGFUL WAY, AND SUCH NATIONAL TREATMENT PROVISION WOULD BE ESSENTIAL TO AN FCN OR AER TREATY, OUR MINIMUM INVESTMENT NEEDS ARE RECOGNITION AND RESPECT FOR U. S. RIGHTS UNDER LAUREL- LANGLEY UNTIL ITS EXPIRATION IN 1974, AND FAIR TREATMENT FOR U. S. INVESTMENT THEREAFTER, INCLUDING DUE CONSIDERATION FOR EXISTING AMERICAN INVESTORS UNABLE TO ACCOMMODATE TO POST LAUREL- LANGLEY REQUIREMENTS BY JULY 1974 WITHOUT CONSIDERABLE HARSHSHIP. MORE SPECIFICALLY, A CHANGE IN THE EXPORT INCENTIVES ACT WHICH WOULD DROP THE NATIONALITY REQUIREMENT FOR ENJOYMENT OF THE BENEFITS OF THE ACT WOULD BE USEFUL BOTH IN ASSURING U. S. FIRMS OF THEIR TREATY RIGHTS UNDER LAUREL- LANGLEY (WHICH WE BELIEVE ARE PRESENTLY DENIED BY THE ACT) AND OF A CONTINUING COMPETITIVE POSITION AFTER THE TREATY'S EXPIRATION. ADDITIONALLY, SUCH A CHANGE WOULD MORE ADEQUATELY SERVE THE PRINCIPAL PURPOSE OF THE ACT IN PROMOTING FILIPINO EXPORTS.

4. ELEMENTS OF THE U. S. TACTICAL APPROACH ON INVESTMENT.

A. WE WILL NOT NEGOTIATE A NEW AGREEMENT COVERING INVESTMENT IN EXCHANGE FOR CONTINUED BILATERAL TARIFF PREFERENCES AND AN EXTENDED PHILIPPINE SUGAR QUOTA;

WE HAVE ONLY RECENTLY REAFFIRMED AS BASIC U. S. POLICY THE 1966 DECISION NOT TO SEEK AN EXTENSION OF THE AUREL- LANGLEY AGREEMENT WITH ITS PARITY RIGHTS FOR - S. INVESTORS AND PREFERENTIAL TRADE POSITION FOR THE U. S. INVESTORS AND PREFERENTIAL TRADE POSITION FOR THE PHILIPPINES. RATHER, WE INTEND TO DEPEND BASICALLY ON THE PHILIPPINE RECOGNITION THAT FOREIGN INVESTMENT HAS A HIGHLY IMPORTANT ROLE TO PLAY IN THE NATION'S FUTURE ECONOMIC DEVELOPMENT. THE CONTRIBUTION OF U. S. INVESTORS TO THE DEVELOPMENT OF THE PHILIPPINE ECONOMY ALREADY SEEMS WELL RECOGNIZED AND WELL ESTABLISHED. THE DELIBERATIONS IN THE CONSULTATIVE GROUP MEETINGS HAVE REPEATEDLY EMPHASIZED THE VITAL NEED FOR EXTERNAL FINANCING TO HELP FUND ECONOMIC GROWTH. WHILE SOME OF SUCH FINANCING IS GOVERNMENT- TO- GOVERNMENT ASSISTANCE, FOREIGN PRIVATE INVESTMENT HAS AN IMPORTANT ROLE TO PLAY.

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B. ADDITIONAL DISADVANTAGES OF TRYING TO NEGOTIATE CONCERNING U. S. INVESTORS' RIGHTS INCLUDE: (1) THE GOP HAS NOT SHOWN ITSELF OVERLY CONCERNED ABOUT THE NICETIES OF THESE RIGHTS. FURTHER, THE THREAT TO U. S. INVESTORS ARISES ON SO MANY LEGAL FRONTS AND U. S. INTERESTS HAVE SO OFTEN BEEN EASILY DEFINED AWAY THAT AN ATTEMPT TO AGREE UPON A FIRMLY DURABLE SET OF U. S. INVESTOR RIGHTS APPEARS A FRUITLESS UNDERTAKING. WE WOULD WISH TO AVOID GRANTING REAL AND VALUABLE BENEFITS IN RETURN FOR ILLUSORY OR Ephemeral RIGHTS FOR U. S. INVESTORS. (2) WE WOULD NOT WANT TO DEVELOP EXPECTATIONS IN THE PHILIPPINES THAT THE BEST WAY TO EXTRACT CONCESSIONS FROM THE USG IS TO RENEW PRESSURES ON U. S. INVESTORS.

C. IN ADDITION TO WHAT WE BELIEVE IS THE PHILIPPINES' BASIC INTEREST IN RETAINING ESTABLISHED U. S. INVESTMENT AND ATTRACTING NEW, WE SEE ELEMENTS IN THE NEW CONSTITUTION THAT SHOULD HELP IMPROVE THE INVESTMENT CLIMATE IN THAT IT (1) PROVIDES SOLUTIONS TO SOME OF THE SPECIFIC PROBLEMS RAISED BY THE QUASHA AND LUSTEVECO CASES, (2) MAKES POSSIBLE - OR MORE RELIABLE - CERTAIN TYPES OF INVESTMENT ARRANGEMENTS SUCH AS THOSE FOR OIL EXPLORATION UNDER SERVICE CONTRACTS, AND (3) PROVIDES THE GOP WITH THE FLEXIBILITY TO SOLVE OTHER MAJOR OUTSTANDING PROBLEMS. WE HAVE SOME CONCERN, HOWEVER, THAT THE GOP MAY SEE THE NEW CONSTITUTION AS PROVIDING THEM WITH NEW BARGAINING LEVERAGE. WE RECOGNIZE THAT THE CONSTITUTION LEAVES A NUMBER OF QUESTIONS AND AMBIGUITIES, AND WE WELCOME FURTHER ANALYSIS BY THE EMBASSY OF ITS ECONOMIC PROVISIONS.

D. IT WAS CLEAR IN 1967-68 TALKS THAT CURRENT PHILIPPINE LAWS WOULD MAKE GRANTING ADEQUATE NATIONAL TREATMENT

DIFFICULT. HOWEVER, IN 1967 TALKS, U. S. TEAM NOTED
" THAT THE GENERAL PRACTICE IN MOST OF THE WORLD... HAS
BEEN... TO ACCORD FOREIGN INVESTMENT IN MOST FIELDS OF
ACTIVITY TREATMENT EQUAL TO THAT ACCORDED LOCAL INVESTMENT"
AND BOTH GROUPS NOTED THAT " RECIPROCAL NATIONAL TREATMENT
SHOULD BE INCLUDED TO THE MAXIMUM EXTENT POSSIBLE IN

ANY FUTURE AGREEMENT ON ECONOMIC RELATIONS." THE
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PHILIPPINE PANEL STATED " THAT IT WOULD GIVE FURTHER
CONSIDERATION TO THIS QUESTION WITH A VIEW TO DETERMINING
THE EXTENT TO WHICH EXCEPTIONS TO NATIONAL TREATMENT
WOULD BE REQUIRED" BY THE GOP.

E. CONTEMPLATED CHANGES IN EXPORT INCENTIVES AND
INVESTMENT INCENTIVES ACTS, WHILE WELCOME, APPEAR TO
LEAVE GOP PRACTICE STILL INCOMPATIBLE WITH AN AER-
TYPE TREATY. WE CONCUR WITH EMBASSY THAT AN EXPLORATORY
DIALOGUE IS NEEDED TO DETERMINE EXTENT OF CURRENT GOP
INTEREST IN AN AER TREATY. IF IT APPEARS THAT GOP IS
GENUINELY SERIOUS ABOUT SUCH A TREATY AND A DECISION IS
THEN MADE TO ENTER INTO FORMAL NEGOTIATIONS, DEPT LEANS
TOWARD SUBMISSION OF A FRESH DRAFT (FYI: BASED ON TOGO
MODEL) AS A POINT OF DEPARTURE. WE FEEL THIS PREFERABLE
TO FURTHER DISCUSSION BASED ON U. S.- THAI AER TREATY,
PARTICULARLY IN VIEW OF CURRENT CONTROVERSY OVER THAI
ALIEN BUSINESS DECREE WHICH HAS POINTED UP TREATY'S
INADEQUACIES REGARDING U. S. INVESTOR RIGHTS. WHILE
IT WOULD NOT BE SUBSTANTIALLY DIFFERENT FROM U. S.- THAI
TREATY, A FRESH DRAFT TREATY WOULD ALSO ALLOW US TO
STATE OUR POSITION CLEARLY WITH REGARD TO WORLD- WIDE
GROWTH OF GOVERNMENTAL RESTRICTIONS WHICH HAS OCCURRED
SINCE PERIOD OF 1967-68 BAGUIO TALKS AND GIVE TANGIBLE
EVIDENCE OF USG SUPPORT TO AMERICAN BUSINESS COMMUNITY
IN THE PHILIPPINES. (DEPARTMENT WOULD APPRECIATE EMBASSY
ANALYSIS OF CURRENT PHIL LAW TO IDENTIFY THOSE AREAS
WHICH NOT CONSONANT WITH U. S.- TOGO AER TREATY AND EMBASSY'S
JUDGEMENT OF GOP WILLINGNESS TO MAKE CHANGES TO CONFORM
TO TREATY. PERTINENT DOCUMENTS BEING POUCED TO EMBASSY.)
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